

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE FOOTBALL ASSOCIATION PREMIER :  
LEAGUE LIMITED, BOURNE CO. (together :  
with its affiliate MURBO MUSIC PUBLISHING, :  
INC.), CHERRY LANE MUSIC PUBLISHING :  
COMPANY, INC., CAL IV ENTERTAINMENT :  
LLC, ROBERT TUR d/b/a LOS ANGELES :  
NEWS SERVICE, NATIONAL MUSIC :  
PUBLISHERS' ASSOCIATION, THE :  
RODGERS & HAMMERSTEIN :  
ORGANIZATION, STAGE THREE MUSIC :  
(US), INC., EDWARD B. MARKS MUSIC :  
COMPANY, FREDDY BIENSTOCK MUSIC :  
COMPANY d/b/a BIENSTOCK PUBLISHING :  
COMPANY, ALLEY MUSIC CORPORATION, :  
X-RAY DOG MUSIC, INC., FÉDÉRATION :  
FRANÇAISE DE TENNIS, THE MUSIC FORCE :  
LLC, and SIN-DROME RECORDS, LTD. on :  
behalf of themselves and all others similarly :  
situated, :  
Plaintiffs, :  
v. :  
YOUTUBE, INC., YOUTUBE, LLC and :  
GOOGLE, INC., :  
Defendants. :  
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07 Civ. 3582 (LLS)  
(related case no. 07 Civ. 2103 (LLS),  
the "*Viacom* action")

**ECF CASE**

**CLASS PLAINTIFFS'**  
**NOTICE OF MOTION FOR**  
**CLASS CERTIFICATION**

PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 23, the Class Plaintiffs shall move  
this Court, before the Hon. Louis L. Stanton, at the United States Court House, 500 Pearl Street,  
New York, New York, at a date and time to be set by the Court, for an Order certifying a Class  
of all persons and entities that:

- (a) own and/or control the copyright and/or the relevant exclusive rights in an original work, and for which a certificate of registration has been issued or

the deposit, application, and fee required for registration have been properly submitted to the U.S. Copyright Office;

- (b) own and/or control exclusive rights in an unregistered copyrighted work and will have registered that work prior to the time of final judgment in this action; and/or
- (c) own and/or control a work that does not require registration as a matter of law; which was, without authorization, reproduced, adapted, distributed, publicly displayed, performed or otherwise transmitted or disseminated on or through the YouTube.com website on or after April 15, 2005 through the deadline for submitting a claim form in this action.<sup>1</sup>

and certifying two Subclasses:

1. “Repeat Infringement Subclass”: All members of the above-defined class who:
  - (a) submitted to defendants a notification of infringement pursuant to 17 U.S.C. §512(c)(3) for a particular work, but either the infringing material identified in the notice remained on the site or substantially similar infringing material was reuploaded after the original material was removed or blocked; or
  - (b) submitted to defendants multiple notifications of infringement pursuant to 17 U.S.C. §512(c)(3), or representative lists of infringing material, but whose copyrighted content continued to appear on the YouTube site after such notifications, without authorization from the class member.
2. “Music Publisher Subclass”: All members of the above-defined class:
  - (a) who own and/or control one or more copyrighted musical composition(s) available on the YouTube site, which musical composition(s) defendants knew or should have known was on the YouTube site (because defendants were notified by the copyright holder or because defendants otherwise identified, tracked or monitored it, or could have identified it, including through tools offered to owners of sound recordings of musical compositions); and

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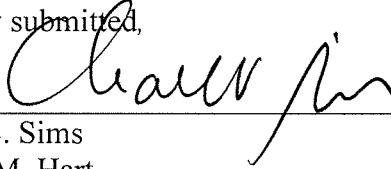
<sup>1</sup> Excluded from the class are: (a) defendants; (b) the subsidiaries and affiliates of defendants; (c) any person or entity who is a partner, officer, director, employee, or controlling person of any defendants; (d) any entity in which any defendant has a controlling interest; (e) any copyright holder who had authorized defendants to exploit such copyrights at the time defendants engaged in the complained of acts; (f) the legal representatives, heirs, successors, and assigns of any excluded parties.

(b) such musical composition was used without proper authorization on the YouTube site.<sup>2</sup>

PLEASE TAKE FURTHER NOTICE, that in support of this motion, the Class Plaintiffs shall rely on the accompanying Declaration of John C. Browne and the exhibits annexed thereto. The materials referenced above are being filed under seal pursuant to the stipulated protective order in this case, pending court rulings and/or agreements by the parties with respect to unsealing.

Dated: April 9, 2010

Respectfully submitted,

  
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<sup>2</sup> A music publisher subclass is appropriate because of the prevalence of unlicensed copyrighted music on YouTube and defendants' knowing disregard for the rights of many music publishers. There are two copyrights in a song – one in the sound recording of the song (typically owned or controlled by a record company), and a second in the underlying musical composition (typically owned or controlled by a music publisher). The evidence shows that defendants recognized the huge value in having music on the YouTube site and endeavored to make deals with, and acquire licenses from, major record companies for the sound recordings of popular music. YouTube knew that it also needed licenses for the underlying musical composition, but did not obtain the requisite musical composition rights from the music publishers (and nonetheless knowingly exploited these works on its site). See CP Mem. 12-14.

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